IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL
Fist Appeal From Order No. 80 of 2002

1. Sri Mohd. Islam S/o Sri Ali Hussain
   R/o Sanjay Nagar
   Lalkua (Nainital)
2. Smt. Kusum Begum W/o Sri Mohd. Islam
   R/o Sanjay Nagar
   Lalkua (Nainital) ... Appellant

Vs

1. M/s New India Assurance Company
   through Divisional Officer
   Civil Lines, Haldwani
   District Nainital
2. Sri Surendra Pal Singh S/o Sri Harnam Singh
   R/o C-18 Jangpura Station
   New Delhi- 110 014 ... Opposite Parties

Sri Z.U. Siddiqui, learned counsel for the appellant
Sri Rajesh Joshi holding brief of Sri T.A. Khan, learned counsel for the opposite party No. 1.

Hon'ble B.C. Kandpal, J.

Present appeal under Section 173 of the Motor Vehicles Act has been preferred against the judgment and order (award) dated 12.02.2002 passed by Motor Accident Claims Tribunal/District Judge, Nainital in Motor Accident Claims Petition No. 185 of 2000 Sri Mohd. Islam Vs Surendra Pal Singh by which the Tribunal allowed the claim petitioner of the claimants and awarded Rs. 1,30,000/- along with interest @ 9% per annum from the date of judgment as compensation.

2. Brief facts of the case are that the on 21.03.2000 at about 07:30 a.m. the deceased – Maqbool Hussain was going towards the left side of the road Lalkuan-Nainital to his place of work i.e. Goyal Singh Paper Mill, Lalkuan. All of a sudden a truck bearing registration No. DIG 5132 dashed the deceased-Maqbook Hussain from the back side resulting which he died on the spot. The truck was being driven in a very rash and

negligent manner. At the time of the incident the deceased aged about 25 years and was working in M/s Goyal Paper Mill, Lalkuan. His monthly salary was Rs. 6000/-. The appellants filed the claim petition before the Tribunal concerned claiming Rs. 9,50,000/- as compensation.

3. The opposite parties filed their written statement separately. The opposite party No. 1, i.e. owner of the truck, had admitted that the accident was actually occurred but on the other hand he has stated that at the time of the accident the truck was insured with M/s New India Assurance Company. He has also stated that the driver of the truck has a valid driving licence and the accident was occurred due to negligence on the part of the deceased.

4. The opposite party No. 1 – New India Assurance Company in its written statement has stated that the claimant did not show the exact age as well as the exact salary of the deceased – Maqbool Hussain. The deceased was getting salary between Rs. 1200/- to 1500/- per month.

5. On the basis of the pleadings of the parties, the Tribunal has framed the following issues:-

1. Whether on 21.03.2000 at 07:30 a.m. son of the claimant – Maqbool Hussain who was going to join his duty when the truck bearing registration No. DIG 532 which was driven by its driver in a rash and negligent manner dashed him while crossing the Gola Road, Lalkuan-Nainital due to which the son of the claimant suffered injuries and succumbed to those injuries? If yes, its effect?

2. Whether the claimant is entitled to receive any compensation from the opposite parties on account of the death of his son in the accident? If yes, from whom and how much?
3. Whether the driver of the offending vehicle which was involved in the accident was not holding the valid driving licence.
4. To how much amount the claimant is entitled?

6. After having considered the material available on record and hearing the learned counsel for the parties, the Tribunal has awarded Rs. 1,30,000/- along with interest @ 9% per annum from the date of judgment as compensation.

7. Heard Sri Z.U. Siddiqui, learned counsel for the appellant, Sri Rajesh Joshi holding brief of Sri T.A. Khan, learned counsel for the opposite party No. 1 and perused the record.

8. The learned counsel for the appellant, has submitted that the Tribunal has not considered the income of the deceased in proper perspective. According to him the deceased at the time of the accident, was working in Paper Mill Lalkuan and was earning Rs. 2400/- per month but the court below has wrongly assessed his annual income at Rs. 15,000/-.

9. Perusal of the judgment of the trial court, it reveals that the deceased Maqbool Alam was a daily wage labourer. Although paper NO. 22-C was filed on behalf of the claimants before the Tribunal showing that the deceased was getting Rs. 71/- per day as labour charges, but the document was not proved. This fact was not dispute by the claimants that the

deceased was working as a labourer with the contractor. The deceased was not in regular employment, hence the Tribunal was well within its jurisdiction to assess the monthly income of the deceased at Rs. 1250/- per month.

10. Learned counsel for the appellant also submitted that the Tribunal has not adopted the correct multiplier in the present case. He contended that the Tribunal should have adopted the correct multiplier. In support of his submission he cited before me the case of ***Manju Devi & another Vs Musafir Paswan & another*** reported in ***VII (2005) SLT, Supreme Court of India, 257.***

11. I have perused the judgment of the Hon'ble Apex Court cited before me. In that case the deceased was the son of the claimants and at the time of the accident his age was 13 years. The Hon'ble Supreme Court has adopted a multiplier of 15. The Hon'ble Supreme Court has held that the multiplier method must be accepted method for determining and ensuring payment of just compensation as it is the method which brings uniformity and certainly to awards made all over the country.

12. The judgment cited before me does not apply to the fact and circumstances of the present case as in the instant case, the record shows that the deceased was aged about 28-30 years at the time of his death. The postmortem/inquest report of the deceased indicates his age as 32 years. There is no evidence on the record available that the deceased was married at the time of the death, therefore, in this case the financial dependency of the parents is to be taken into consideration. The deceased would have been spending 1/3rd amount of his total income towards his own expenditure. In

Case, if the deceased would have been married subsequently then certainly the financial dependency of the parents would have come down to the lower side. However, in the instant case, the insurance company has not filed any appeal against the amount of compensation awarded in favour of the claimant. Therefore, I think that the Tribunal in this case has applied the correct multiplier while calculating the amount of compensation and thus has rightly awarded an amount of compensation for Rs. 1,30,000/-.

13 I do not find any infirmity in the impugned judgment and award by which the amount of compensation has been awarded in favour of the claimant/ appellant.

14. The appeal lacks merit and is liable to be dismissed.

15. Accordingly, the appeal is dismissed.

08.09.2006 **(B.C. Kandpal, J.)**
ASWAL